Calendar No. 75

101ST CONGRESS *1st Session*	SENATE	REPORT 101-37

CONSUMER PRODUCT SAFETY COMMISSION AUTHORIZATION ACT OF 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 605

MAY 25, 1989.—Ordered to be printed

Filed, under authority of the order of the Senate of May 18 (legislative day, JANUARY 3), 1989

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CONSUMER PRODUCT SAFETY COMMISSION AUTHORIZATION ACT OF 1989

MAY 25, 1989.—Ordered to be printed

Filed, under authority of the order of the Senate of May 18 (legislative day, January 3), 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 605]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 605) to authorize appropriations for the Consumer Product Safety Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

This legislation amends the Consumer Product Safety Act (CPSA) to authorize appropriations for fiscal years (FY) 1989, 1990, and 1991 for the purpose of carrying out various Consumer Product Safety Commission (CPSC) programs. The legislation also would amend the CPSA regarding voluntary standards, rulemaking, and administrative matters.

BACKGROUND AND NEED

The CPSC administers four major statutes: the CPSA (15 U.S.C. 2051 et seq.); the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq.); the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.); and the Flammable Fabrics Act (FFA) (15

U.S.C. 1191 et seq.). These statutes direct the CPSC to establish safety standards, mandate compliance, undertake safety research, order recalls, provide consumers with information, and otherwise undertake activities to protect American consumers.

Legislation to reauthorize the CPSC has not been enacted since 1981. Since the authorization expired, funds for activities of the CPSC have been continued through appropriations acts, although the Committee has reported legislation during each intervening Congress to authorize such appropriations.

The CPSC in recent years has been troubled by internal disagreement, which has led to reduced effectiveness in fulfilling its mandate. The compliance and enforcement activities of the CPSC have not been vigorously undertaken, and this failure to act aggressively has communicated the impression that product safety is not of primary national importance. American consumers and businesses alike are less able to anticipate what will be the CPSC's initiatives and responses to product safety matters; this uncertainty has meant that consumers rely less on the safety of products, and manufacturers of products are not certain what is expected of them. Testimony presented to the Committee indicates that the difficulties and uncertainties currently involve three major areas of CPSC activities: administrative matters; rulemaking delays; and voluntary standard activities.

The CPSA provides that the CPSC shall consist of five commissioners, of whom three constitute a quorum. Due to limitations imposed in the appropriations process, sufficient funds are available for three members, who continue to be bound by the quorum requirements in the CPSA. The recent resignation of the Chairman of the CPSC has left the agency with only two members, less than required to satisfy the statutory quorum requirements, and therefore unable to meet to take formal action.

Testimony presented at hearings held by the Consumer Subcommittee indicates that the average time for promulgation of a final rule by the CPSC is four to five years. During this process, the CPSC is receiving comments from interested parties about the proposed rule, but no final mandatory standard has been adopted to protect the public.

In addition, the CPSA requires that the CPSC defer to voluntary standards in certain circumstancees. Suggestions have been made that this requirement has been used to thwart compliance and enforcement activities of the CPSC, which is clearly contrary to congressional intent.

The bill as reported does not contain "product-specific" initiatives, though their absence should not be construed as an indication that the Committee does not view them as important matters for consideration. Rather, the Committee intends to address some of these matters in the future, and chose at this time to provide redirection and make improvements in the overall structure and regulatory mission of the CPSC.

Legislative History

On March 13, 1989, the Commerce Committee conducted an authorization hearing on the CPSC. On March 17, 1989, Senator

Bryan introduced S. 605 which has been cosponsored by Senators Gore, Kerry, and Reid. S. 605 was considered on April 18 by the full Commerce Committee and ordered to be reported without objection, with an amendment in the nature of a substitute.

Summary of Major Provisions

S. 605 as reported authorizes appropriations of $34.5 million for FY 1989, $36.5 million for FY 1990, and $38.179 million for FY 1991.

The reported bill changes the membership of the CPSC to three comissioners, with a quorum of two members, and requires that major department heads at the CPSC be appointed and removed by action of the full CPSC.

It also requires the CPSC to consider petitions for action filed under section 553(e) of title 5, United States Code, in a reasonable time period, and to state reasons for granting or denying the petition. In the case of a voluntary standard, the petition only can be denied if the CPSC has made certain determinations regarding the voluntary standard.

The bill as reported requires that the CPSC permit comments prior to deferral to a voluntary standard, and requires that voluntary standards exist prior to deferral by the CPSC under section 9 of the CPSA. The bill establishes time limits for the conclusion of rulemaking proceedings. The bill increases the amount of civil penalties, to counter inflation's effects on their value.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 1, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 605, the Consumer Product Safety Commission Authorization Act of 1989, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 18, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 605.
2. Bill title: Consumer Product Safety Commission Authorization Act of 1989.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, on April 18, 1989.

4. Bill purpose: To authorize appropriations for the Consumer Product Safety Commission, and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993	1994
Consumer Product Safety Commission:						
Authorization level	0	36.5	38.2			
Estimated outlays	0	31.0	37.9	5.7		
Increases in pay and retirement benefits:						
Estimated authorization level	.7	2.2	3.4			
Estimated outlays	.7	2.1	3.3	.1		
Total:						
Estimated authorization level	.7	38.7	41.6			
Estimated outlays	.7	33.1	41.3	5.9		

The costs of this bill fall within budget function 550.

Details in this table may not add to totals because of rounding.

Basis of estimate: S. 605 would reauthorize the Consumer Product Safety Commission (CPSC) for fiscal years 1989 through 1991. Authorization levels for the CPSC are partially stated in S. 605. In fiscal year 1989, the bill authorizes the 1989 appropriation level of $34.5 million. Because the authorization level equals the current appropriation, no 1989 cost for this component is shown in the estimate. In addition to the stated levels, the bill authorizes such sums as may be necessary for increases in pay and retirement benefits for fiscal years 1989 through 1991. For 1989, we have assumed that the 1989 appropriation does not include monies for the 1989 pay raise. We have estimated, therefore, an additional authorization equal to 4.1 percent (the 1989 pay raise in January 1989) of the CPSC payroll for three quarters of the fiscal year. The 1990 and 1991 increases in pay and retirement benefits were calculated by inflating the pay component of the CPSC account by the CBO pay inflator. This estimate assumes that the 1990 and 1991 authorizations would be fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

6. Estimated cost to State and local government: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Lori Housman.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The Committee does not anticipate that enactment of S. 605 will result in an increased level of regulation. The bill imposes time limitations on rulemaking activities, but does not require any additional rulemakings to be conducted.

ECONOMIC IMPACT

The bill should have no economic impact on any individuals. The authorization levels in the bill reflect current spending levels and thus should have no inflationary impact.

PRIVACY

The Committee expects that S. 605 will have no adverse impact on the personal privacy of the individuals affected.

PAPERWORK

S. 605 does not impose additional reporting requirements on the CPSC or others.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states the short title of the legislation, the "Consumer Product Safety Commission Authorization Act of 1989".

SECTION 2.—QUALIFICATIONS OF MEMBERS; QUORUM

Subsection (a) of this section requires that the President, in making appointments to the CPSC, consider individuals with demonstrated consumer and safety experience. Testimony presented to the Committee stressed the importance of appointing individuals to the CPSC who are knowledgeable in the issues involved in consumer product safety. The Committee does not intend to suggest, however, that other experience is not also relevant. Indeed, a CPSC composed of members with widely diverse backgrounds is consistent with the concept of a collegial body.

Subsection (b) of this section changes the number of CPSC commissioners from five to three, and adjusts the quorum requirement from three to two members, in keeping with the reduction in number of commissioners. Currently, funding has been provided for only three commissioners. This limitation and the recent resignation of the Chairman of the CPSC have made the agency unable to fulfill its statutory responsibilities because of the lack of a quorum. The amendments will ensure that the CPSC continues to have sufficient membership to conduct its operations.

SECTION 3.—APPOINTMENT OF CERTAIN PERSONNEL

Subsection (a) of this section amends section 4(g)(1) of the CPSA to require that top-level personnel at the CPSC (other than in each member's office) are to be appointed by the Chairman with the concurrence of the other members of the CPSC. Currently, only certain of these individuals are so appointed, and this amendment will

reaffirm that all top-level employees are responsible to the full CPSC

Also, the subsection provides that no such individuals may be removed from their positions except by action of the full CPSC. This provision parallels the appointment process.

Finally, the subsection requires that the head of the Office of Compliance and Enforcement within the CPSC be an attorney, as is currently the case. As that Office is responsible for ensuring compliance with the CPSA and standards adopted pursuant to the CPSA and for recommending action when persons fail to meet such responsibilities, it is desirable for the head of that Office to possess the legal training necessary to make informed decisions on compliance and enforcement matters. The recent reassignment of the head of the Office of Compliance, an individual with a long history of service to the CPSC, and his replacement with an individual who is not an attorney, emphasized the importance of having an individual with appropriate qualifications responsible for supervising the attorneys in this Office.

Subsection (b) of this section specifies that an individual may be appointed to certain top-level positions at the CPSC (other than in each member's office) on an acting basis for a period not to exceed 90 days, unless the acting appointment is approved by the CPSC. This should ensure that the Chairman may make acting appointments to respond to exigent circumstances, but also afford the full CPSC with the opportunity to act on appointments to major positions.

SECTION 4.—PRIORITIES

This section adds a new subsection (j) to section 4 of the CPSA to require the CPSC to prioritize its actions during each year. In establishing the agenda, the CPSC must hold a public hearing and offer interested parties the opportunity to comment. Currently, the CPSC follows these procedures, and this provision merely codifies this existing practice.

SECTION 5.—DISCLOSURE TO CONTRACTORS

This section amends section 6(a)(8) of the CPSA (15 U.S.C. 2055(a)(8)). Subsections (a)(2) through (a)(6) of section 6 of the CPSA provide substantive and procedural protections for trade secrets and certain other confidential business information reported to or otherwise obtained by the CPSC. Under section 6(a)(2), such business information shall be considered confidential and shall not be disclosed. Subsections (a)(3) through (a)(6) further provide that when a manufacturer or private labeler designates information as confidential, the CPSC (if it determines that the information is not confidential) may not disclose the information until the CPSC has both (1) notified the manufacturer or private labeler of the CPSC's intent to disclose the information, and (2) given the manufacturer or private labeler not less than ten days from the date of receipt of the notification to bring an action in U.S. district court to restrain disclosure of the information.

Section 6(a)(8) provides that subsections (a)(2) through (a)(6) of section 6 do not prohibit the disclosure of information to "officers

or employees" of the CPSC. The CPSC has expressed its concern that section 6(a)(8) of the CPSA does not provide clearly that the CPSC may disclose to a CPSC contractor product hazard information essential to the contractor's research or investigation.

This amendment will permit the disclosure of CPSC-held information needed by agency contractors for compliance with their contracts. Contractors remain bound by section 6(d)(2) of the CPSA, which requires that contractors comply with the disclosure provisions of section 6 in making any subsequent disclosure of information to the general public.

SECTION 6.—PETITION REGARDING VOLUNTARY STANDARDS

Under section 553(e) of title 5, United States Code (formerly the Administrative Procedure Act), any interested party may petition a Government agency to commence a rulemaking proceeding, and the agency is to consider and make a determination on the petition within a reasonable time.

Subsection (a) of this section adds a new subsection to section 9 of the CPSA to require the CPSC to make any such determination within a reasonable time, and to state the reasons for approving or denying any such petition. The subsection further provides that the CPSC may only deny such a petition on the basis of a voluntary standard if the standard is actually in existence, if the CPSA has determined that the standard is likely to produce an elimination or adequate reduction in the risk of injury involved, and if it is likely that industry will be in substantial compliance with the standard.

The Committee consistently has received testimony and comments regarding the voluntary standards process since the provisions were enacted in 1981. Though the Committee did not desire to reenact section 10 of the CPSA as it existed before the 1981 amendments (which permitted any interested person to file a petition with the CPSC to commence a rulemaking proceeding), the Committee is aware that the CPSC at times has not been responsive to concerns that voluntary standards development has been inadequate or too slow. In fact, it has been suggested that the CPSC may seek to utilize the deferral to voluntary standards required under section 9 to justify inaction or delay with regard to product risks. This is clearly contrary to the intent of the 1981 amendments. The development of voluntary standards should proceed as expeditiously as possible, with aggressive development of standards adequate to address risks of injury.

The CPSC is required under this provision to act on a petition within a reasonable time. A "reasonable" time is one which affords the CPSC adequate time to investigate and assess the claims in a petition, but without unnecessary delay. A "reasonable" time may vary according to the issue involved and the particular petition that has been filed, but the Committee expects that the CPSC will not unnecessarily delay responding to petitions. Under section 9 of the CPSA, a request for a voluntary standard begins with the filing of an advance notice of proposed rulemaking. Because this section affords interested parties the ability to suggest voluntary action to address safety issues, it is not anticipated that the CPSC will delay in responding to petitions under this section because of the devel-

opment of a voluntary standard. Rather, such development will occur once the petition is granted and the process provided in section 9 is begun.

Subsections (b) and (c) of this section make identical amendments to the FHSA and FFA, respectively.

SECTION 7.—TIME LIMITATIONS FOR PROPOSED RULES

This section amends section 9(c) of the CPSA to require the CPSC to issue a proposed consumer product safety rule within 12 months after an advance notice of proposed rulemaking for such a rule has been issued, unless the CPSC determines the rule is not likely to eliminate or reduce the risk of injury from the product. The CPSC may extend this time for good cause, but is required to notify the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee of the extension and the reasons for the extension, and estimate the date by which the rule will be completed.

The CPSC has testified previously before the Consumer Subcommittee that the average time for development of a mandatory standard by the CPSC is four and one-half years. The Committee believes that in most cases this time period is excessive, and the Committee expects the CPSC to streamline its procedures in order to ensure that rulemakings are conducted expeditiously, without sacrificing the thorough review that is necessary in any rulemaking proceeding.

The Committee envisions that additional time would be warranted under the "good cause" standard where, for example, additional time is needed due to the complexity of the subject matter or to ensure that the proposed consumer product safety rule is technically sound. Another example of the need for additional time would be for the development of a voluntary standard where efforts to develop such a standard have been proceeding expeditiously and in good faith, the standard can be expected to eliminate or adequately reduce the risk of injury identified by the Commission, and completion of the voluntary standard can be anticipated within a short time.

The Committee does not intend that the extension authority in this section will be utilized so often as to become the norm, rather than the exception.

SECTION 8.—VOLUNTARY CONSUMER PRODUCT SAFETY STANDARDS

In 1981, the CPSC was amended to require that the CPSC defer to a voluntary standard where the CPSC determines that a voluntary standard developed in response to the invitation contained in section 9(a)(6) of the CPSC is likely to result in the elimination or adequate reduction of the risk of injury and it is likely that there will be substantial compliance with such standard. This invitation is initiated by the publication of an advance notice of proposed rulemaking (ANPR).

The Committee reaffirms its belief that voluntary safety standards can play an important role in protecting consumers. CPSC deference to voluntary standards permits the CPSC to save scarce resources and can permit safety problems to be addressed in a more

expeditious manner than might otherwise occur, thereby saving lives and preventing injuries. Such deferral authority, however, was not intended to become an excuse for inaction or delay on the part of the CPSC, including delay in issuing ANPRs where such issuance is appropriate.

Subsection (a) of this section amends section 9(b)(2) of the CPSA to require that the CPSC defer under section 9 of the CPSA to a voluntary standard only where the voluntary standard exists. The Committee understands that the 1981 amendment to section 9 anticipated that persons would submit to the CPSC their intentions and a plan to modify or develop a voluntary standard. Recently, however, suggestions have been made that the mere promise to submit such a standard, or a "hope" by the CPSC that such a standard might be developed, may be a sufficient basis for deferral under section 9(b). To clarify the original intent of the 1981 amendments, S. 605, as reported, includes language requiring that the standard actually be in existence before deferral under section 9(b) may occur. This subsection also makes a parallel amendment to section 3(g)(2) of the FHSA.

Subsection (b) amends section 9(b)(2) of the CPSA to require that the CPSC afford interested persons the opportunity to comment regarding any voluntary standard prior to CPSC deferral. When the CPSA was amended in 1981, the conference report discussed the adoption of voluntary standards in the sense that they were finally approved in accordance with reasonable procedures, such as those utilized by groups that develop national consensus standards. The Committee believes that participation by affected individuals as early as possible in the development of a voluntary standard will yield the best results. The requirement in the bill as reported that an opportunity to comment be afforded prior to deferral is consistent with that earlier intention, and reaffirms the Committee's intent that participation by interested and affected parties occur during the development of voluntary standards. Subsection (b) also makes a parallel amendment to section 3(g)(2) of the FHSA.

Subsection (c) amends the CPSA, the FHSA, and the FFA to require that the CPSC establish a system for monitoring compliance with voluntary standards to ensure that industry is following the voluntary guidelines. In order to guarantee the integrity of the voluntary standards process under these Acts, the Committee believes that it is imperative for the CPSC to monitor compliance with voluntary standards. Absent such oversight, adherence to these standards might diminish, resulting in unnecessary risks to consumers. The Committee intends that the system established by the CPSC under this amendment provide for CPSC review of all voluntary standards on a regular basis.

SECTION 9.—COST-BENEFIT ANALYSIS

In recent years, there has been controversy as to whether the CPSC is required to consider the costs of corrective action as well as the benefits likely to be derived from the action, in matters addressed under sections 12 and 15 of the CPSA. Especially in the past several years, the CPSC has almost routinely imposed a mechanical cost-benefit process which critics maintain has delayed en-

forcement activity by the CPSC. These critics also claim that weighing the costs and benefits is inappropriate in determining, for example, whether a product contains a defect and what should be the corrective action for that defect. Because of the notion of "unreasonable risk" involved, e.g, in actions brought under section 12 to counter imminent hazards, others assert that the CPSC must consider the likely effectiveness of proposed corrections and the cost that would be imposed as a result of those improvements.

Subsection (a) of this section amends section 12 of the CPSA (relating to CPSC action to address an imminent hazard) by stating that the preparation of a cost-benefit analysis is not required. The CPSC, of course, would be permitted to prepare such an analysis in those situations where it believed the analysis to be appropriate. The Committee is most concerned about the imposition in any case of the kind of mechanical cost-benefit analysis utilized in recent years.

Subsection (b) of this section adds this provision to section 15 of the CPSA (relating to non-imminent repair, replacement or refund), and subsection (c) adds the provision to the FHSA.

SECTION 10.—NOTIFICATION

Under section 15(b) of the CPSA, a manufacturer, distributor, or retailer must notify the CPSC when it obtains information which reasonably supports the conclusion that its product fails to comply with a product safety rule, or contains a defect which could create a substantial product hazard. This notification process acts as a kind of "early warning system" for the CPSC, alterting it to potential problems that warrant further investigation for possible corrective action.

In its regulations and interpretive materials regarding section 15(b), the CPSC has correctly indicated that the intention of Congress was to encourage widespread reporting of potential hazards. In addition, the CPSC has found "reporting to be invaluable since manufacturers, distributors, and retailers often receive safety-related information long before the Commission does and before injuries have occurred . . . The Commission believes that vigorous reporting as . . . mandated by Congress will help reduce injuries by identifying a greater number of potentially hazardous products." (Pages 34988–89, Federal Register, Vol. 43, No. 152, Monday, August 7, 1978.)

Many have indicated that under-reporting of product hazards is prevalent. Information received by the Consumer Subcommittee suggests that only about 150–200 reports are received each year. In part, this is because current law requires notification either for violation of a safety rule or when a defect could present a substantial product hazard. Manufacturers are reluctant to indicate that their products may contain a defect or do not believe their products to be defective, and so often do not supply the CPSC with notice under the law. This failure to report places upon the CPSC the entire burden of doing investigative work to uncover products that require corrective action, an activity that the CPSC (particularly in budget-strained circumstances) is not equipped to perform unilaterally.

The bill as introduced mandated a manufacturer to report when its product was the subject of a lawsuit involving serious injury or death, but the Committee was concerned that this requirement might not take into consideration such matters as frivolous filings or other factors that might detract from a manufacturer's inclination to comply with the law.

As reported, this section amends section 15(b) of the CPSC to add two additional situations in which manufacturers would be required to report—namely, where information is received that reasonably supports the conclusion that a product either (1) fails to comply with a voluntary standard on which the CPSC has relied under the CPSA, or (2) creates an unreasonable risk of injury or death.

Voluntary standards are becoming more utilized than before, and indeed the CPSA states a preference for voluntary action in lieu of mandatory standards. Therefore, the Committee has determined that it is desirable for the CPSC to receive information regarding these standards as well as information on violations of mandatory rules. The committee anticipates that the CPSC may develop procedures or interpretations of this provision regarding the need for reporting of minor, technical violations of voluntary standards.

In addition, manufacturers will be held to a "reasonable person" standard regarding unreasonable risk of serious injury or death. The correct inquiry is whether a reasonable person could conclude, given the information available to the manufacturer, that the product creates such a risk. A product liability action, consumer reports, or reports, or reports from experts suggesting the existence of such a risk could be instances under which a manufacturer would become subject to the reporting requirement in the bill, as reported.

This provision will increase the number of section 15(b) reports to the CPSC, and provide valuable information to the CPSC to assist it in implementing its statutory responsibilities.

SECTION 11.—CIVIL PENALTIES

Civil penalties were provided under the CPSA when it was enacted in 1972, in the amount of $2,000 for each violation and an aggregate penalty of $500,000. Since that time, no adjustment has been made to the dollar figures in the statute, despite the fact that inflation has eroded the value of the penalties. Testimony presented to the Committee indicated that these penalties are worth only 36 percent of their original value, or $720 and $180,000, respectively.

To address this inflation erosion, subsection (a) of this section amends the CPSA to increase the penalties to $5,000 for individual violations, and $1,250,000 for a related series of violations.

In addition, civil penalties were not provided for violation of the FHSA. Their absence was demonstrated recently in the case of injuries and deaths caused by lawn darts. Regulations governing this product had been adopted under the FHSA, and the CPSA found that manufacturers of lawn darts were not in compliance with those regulations. However, the manufacturers could not be as-

sessed a civil penalty because such penalties were not contained in the FHSA.

Subsection (b) adds civil penalties to the FHSA, in the amount of $5,000 and $1,250,000 for a related series of violations.

Subsection (c) of this section requires the CPSC to report annually to the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee regarding the number of civil penalties imposed, the violations that led to the civil penalties being imposed, the amount of revenue recovered from the penalties, and the effect (if any) on inflation on the civil penalty amounts provided in the CPSA and FHSA.

SECTION 12.—CHRONIC HAZARD ADVISORY PANEL

This section amends section 28(b)(1) of the CPSA, which sets forth the membership of chronic hazard advisory panels appointed under the CPSA to advise the CPSC respecting the chronic hazards of cancer, birth defects, and gene mutations associated with consumer products. Section 28(b) of the CPSA contains limitations on the persons who may serve on such advisory panels, and these limtiations were intended to preclude individuals with a conflict of interest from providing advice to the CPSC regarding these matters. Paragraph (1) of subsection (b) excludes officers or employees of the United States from service on these panels. However, the Committee is aware that it has been difficult to find qualified individuals to serve on some panels because of these statutory limitations. Therefore, the amendment made by this section would permit Federal employees from the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research to serve on a chronic hazard advisory panel. Enlarging the resource pool from which members of these panels may be selected in this way will provide more expert assistance to the CPSC in evaluating chronic hazards, without creating the potential for conflicts of interest.

SECTION 13.—AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations of $34,500,000 for FY 1989, $36,500,000 for FY 1990, and $38,179,000 for FY 1991. The FY 1989 figure is the appropriated amount, and the subsequent years are adjusted for inflation in accordance with inflation estimates of the Congressional Budget Office.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

CONSUMER PRODUCT SAFETY ACT

Section 4 of that Act

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of [five] *three* Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. *In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, and qualified to serve as members of the Commission.* The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) * * *

(c) Not more than [three] *two* of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engate in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but [three] *two* members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) through (f) * * *

[(g)(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.]

(g)(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual

appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may remove an individual from any position specified in paragraph (1) of this subsection only with the approval of the Commission. The Chairman may appoint only an individual who is an attorney as the Associate Executive Director for Compliance and Administrative Litigation. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(2) through (4) * * *

(5) No individual may be appointed on an acting basis to any position specified in paragraph (1) of this subsection for a period in excess of 90 days unless such appointment is approved by the Commission.

(h) through (i) * * *

(j) At least 30 days before the beginning of each fiscal year, the Commission shall establish priorities for its actions pursuant to the Acts under its jurisdiction. Before establishing such priorities, the Commission shall conduct a public hearing on the priorities and shall provide reasonable opportunity for the submission of comments.

Section 6 of that Act

PUBLIC DISCLOSURE OF INFORMATION

SEC. 6. (a)(1) * * *

(2) through (7) * * *

(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other [officers or employees] *officers, employees, or representatives of the Commission (including contractors)* concerned with carrying out this Act or when relevant in any administrative proceeding under this Act, or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information in Commission administrative proceedings, or in judicial proceedings to which the Commission is a party, shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(b) through (d) * * *

Section 7 of that Act

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) * * *

(b)*(1)* The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) whenever compliance with such voluntary standrds would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.

(2) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (1) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(c) * * *

Section 9 of that Act

PROCEDURE FOR CONSUMER PRODUCT SAFETY RULES

SEC. 9. (a) * * *

(b)(1) * * *

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (a)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard.

the Commission shall terminate any proceeding to promulgate a consumer product safety rule respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, *except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. Prior to relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) who were not involved in the development of such standard a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.*

(c) No consumer product safety rule may be proposed by the Commission unless, not less than 60 days after publication of the notice required in subsection (a), the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) through (3) * * * *

(4) a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanatin of why such alternatives should not be published as a proposed rule.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. *Any proposed consumer product safety rule shall be issued within 12 months after the date of publication of an advance notice of proposed rulemaking under subsection (a) of*

this section relating to the product involved, unless the Commission determines that such proposed rule is not likely to eliminate or reduce the risk of injury associated with the product. The Commission may extend the 12-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register.

(d) through (h) * * *

(i) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the peitition, and it is likely that there will be substantial compliance with the standards.

Section 12 of that Act

IMMINENT HAZARDS

SEC. 12. (a) * * *

(b) through (e) * * *

(f) Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product under this section, to prepare a comnparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.

Section 15 of that Act

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

SEC. 15. (a) * * *

(b) Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule[; or] *or with a voluntary consumer product safety standard upon which the Commission has relied under section 9;*

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2)[,] *; or*

(3) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to [comply or of such defect,] *comply, of such defect, or of such risk,* unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such [defect or failure to comply.] *defect, failure to comply, or such risk.*

(c) through (g) * * *

(h) Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

Section 20 of that Act

CIVIL PENALTIES

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed [$2,000] *$5,000* for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (7), (8), (9), or (10) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed [$500,000] *$1,250,000* for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed [$500,000] *$1,250,000* for any related series of violations.

(2) * * *

(b) through (d) * * *

Section 28 of that Act

CHRONIC HAZARD ADVISORY PANEL

SEC. 28. (a) * * *

(b) Each Panel shall consist of 7 members appointed by the Commission from a list of nominees who shall be nominated by the President of the National Academy of Sciences from scientists—

(1) who are not officers or employees of the United States *(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research),* and who do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and

(2) who have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.

The President of the National Academy of Sciences shall nominate for each Panel a number of individuals equal to three times the number of members to be appointed to the Panel.

Section 32 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed—

(1) through (7) * * *

(8) $33,000,000 for the fiscal year ending September 30, 1982; [and]

(9) $35,000,000 for the fiscal year ending September 30, 1983[.]; *(10) $34,5000,000 for the fiscal year ending September 30, 1989, together with such sums as may be necessary for increases in pay and retirement benefits provided by law;*

(11) $36,500,000 for the fiscal year ending September 30, 1990, together with such sums as may be necessary for increases in pay and retirement benefits provided by law; and

(12) $38,179,000 for the fiscal year ending September 30, 1991, together with such sums as may be necessary for increases in pay and retirement benefits provided by law.

For payment of accumulated and accrued leave under section 5551 of title 5, United States Code, severance pay under section 5595 under such title, and any other expense related to a reduction in force in the Commission, there are authorized to be appropriated such sums as may be necessary.

(b) through (c) * * *

FEDERAL HAZARDOUS SUBSTANCES ACT

Section 6 of that Act

SEIZURES

SEC. 3. (a) * * *

(b) through (f) * * *

(g)(1) * * *

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 2(q)(1) or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, *except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in exist-*

ence. Prior to relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) who were not involved in the development of such standard a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(h) through (i) * * *

(j) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

Section 5 of that Act

PENALTIES

SEC. 5. (a) * * *

(b) * * *

(c)(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of section 4 (a), (b), (c), (d), (f), (g), (i), and (j) shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4—

(A) if the person who violated such subsection is not the manufacturer or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) the having of actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

Section 15 of that Act

NOTICE AND REPAIR, REPLACEMENT, OR REFUND

SEC. 15. (a) * * *
(b) through (f) * * *

(g) Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

FLAMMABLE FABRICS ACT

Section 4 of that Act

REGULATION OF FLAMMABLE FABRICS

SEC. 4. (a) * * *
(b) through (g) * * *
(h) (1) * * *
(2) * * *

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(i) through (j) * * *

(k) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

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